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NOTES

"RAINBOW CITY"—THE NEED FOR FEDERAL CONTROL IN THE SALE OF UNDEVELOPED LAND

I. Introduction

For many years, the interstate sale of undeveloped land has caused misery for many people. Such land has often been bought by elderly persons seeking to build homes for retirement.¹ Others have purchased subdivided lots with the intention of obtaining extravagant returns.² In actuality, much of this land has been situated in "swamps, flood control areas, deserts, mountains, remote valleys, and—in some cases—jungle lava beds outside the continental U.S. . . ."³ The adaptability of the land for retirement residence and its potential for investment returns were often nonexistent. People therefore found themselves retiring without land upon which to build. Those who bought the land for investment squandered their money without a chance of obtaining a return.

Although the states addressed themselves to the problem of remedying these abuses, their attempts were futile. Federal solutions were equally inept. This Note will examine the inadequacies of these state and federal attempts to remedy the situation, and it will put forward a plan which can and must be followed in order to adequately protect the American public.

II. State Statutory Controls

An examination of existing state statutes reveals that state laws concerning the sale of land break down into three main categories. The first category contains some of the oldest statutes in the spectrum and may be designated as the "false" or "fraudulent advertising" category.⁴ Certain classes of "consumer protection" statutes comprise the second category.⁵ "Land registration" or "dis-

¹ *Hearings Before the Subcomm. on Frauds and Misrepresentations Affecting the Elderly of the Senate Special Comm. on Aging*, 88th Cong., 2d Sess. (1964) [hereinafter cited as *1964 Hearings*].

² *Hearings on S. 2672 Before the Subcomm. of the Senate Comm. on Banking and Currency*, 89th Cong., 2d Sess. (1966) [hereinafter cited as *1966 Hearings*].

³ 114 CONG. REC. 15271 (1968).

⁴ False Advertising: *Alabama*: ALA. CODE ch. 45 § 211 (1959); *Arkansas*: ARK. STAT. ANN. § 41-1961 (Cum. Supp. 1969); *Illinois*: ILL. ANN. STAT. § 157.21a (Cum. Supp. 1971); *Kentucky*: KY. REV. STAT. ANN. ch. 434 § 434.270 (1969); *Louisiana*: LA. REV. STAT. tit. 51, § 411 (1965); *Mississippi*: MISS. CODE ANN. § 2003.5 (Cum. Supp. 1968); *Nevada*: NEV. REV. STAT. ch. 207, § 207.170 (1967); *North Dakota*: N.D. CENT. CODE § 51-12-01 (Supp. 1969); *South Dakota*: S.D. CODE ch. 22-41, § 22-41-10 (1967); *Utah*: UTAH CODE ANN. ch. 4, § 76-4-1 (1953); *Virginia*: VA. CODE ANN. ch. 4, § 59.1-44 (1968 Replacement Volume); *Wyoming*: WYO. STAT. ANN. ch. 3, § 6-35 (1957).

Fraudulent advertising: *District of Columbia*: D.C. CODE ENCYCL. ANN. ch. 14, § 22-1411 (1967); *Michigan*: MICH. COMP. LAWS § 445.801 (1967); *Mississippi*: MISS. CODE ANN. § 2003.5 (Cum. Supp. 1968); *New Jersey*: N.J. REV. STAT. § 56:8-1 (Cum. Supp. 1970-1971); *Ohio*: OHIO REV. CODE ANN. § 1707.33 (Supp. 1970); *Tennessee*: TENN. CODE ANN. § 39-1910 (Cum. Supp. 1970); *Texas*: TEX. CODE ANN. § 17.12 (Cum. Supp. 1970-1971).

⁵ *Arizona*: ARIZ. REV. STAT. ANN. ch. 10, §§ 44-1521 to 44-1534 (1967); *Colorado*: COLO. REV. STAT. ANN. §§ 55-5-1 to 55-5-13 (Permanent Cum. Supp. 1969); *Delaware*: DEL. CODE ANN. §§ 2511-27 (Cum. Supp. 1968); *Iowa*: IOWA CODE ANN. § 713.24 (Cum. Supp. 1970); *Maryland*: MD. ANN. CODE art. 83, §§ 19-27 (1969 Replacement Volume); *Massachusetts*: MASS. ANN. LAWS ch. 93A, §§ 1-10 (Cum. Supp. 1969); *Pennsylvania*: PA.

closure" statutes make up the third category.⁶

State "false advertising" statutes are generally aimed at preventing misleading advertising.⁷ They ordinarily do this by prohibiting *intentional* deception.⁸ Violations of the act are criminal offenses and fines are generally imposed on the violators.⁹ This method prevents deception through deterrence only—not via active before-the-fact prevention.

"Consumer protection" statutes in a number of states¹⁰ present a more modern approach to the elimination of fraudulent practices in the interstate sale of subdivided land.¹¹ The "consumer protection" statute generally addresses itself to the problem of intentional deception practiced upon the recipient.¹² "Merchandise" is defined to include real estate,¹³ and the attorney general of the state is charged both with enforcement¹⁴ and with recommending legislation to keep the law abreast of schemes devised by promoters.¹⁵ Enforcement of the statute is generally accomplished by means of injunctions,¹⁶ cease and desist agreements,¹⁷ and fines and/or imprisonment for violations of injunctions.¹⁸

STAT. ANN. ch. 4, §§ 201-1 to 201-9 (Cum. Supp. 1970); *Rhode Island*: R.I. GEN. LAWS ANN. ch. 13.1, §§ 6-13.1-1 to 6-13.1-11 (1969); *Texas*: TEX. REV. CIV. STAT. ANN. ch. 10, art. 5069-10.01 to 10.08 (1971); *Vermont*: VT. STAT. ANN. ch. 63, §§ 2451-62 (Cum. Supp. 1970); *Washington*: WASH. REV. CODE ANN. §§ 19.86.010 to 19.86.920 (Supp. 1970).

6 *Alaska*: ALASKA STAT. ch. 55, §§ 04. to 46. (Cum. Supp. 1969); *Connecticut*: CONN. GEN. STAT. ANN. §§ 20-329a to 20-329m (Cum. Supp. 1970-1971); *Florida*: FLA. STAT. ANN. §§ 478.011 to 478.33 (Cum. Supp. 1970-1971); *Hawaii*: HAWAII REV. LAWS ch. 484, §§ 484-1 to 484-22 (1968); *Illinois*: ILL. ANN. STAT. §§ 371-89 (Cum. Supp. 1971); *Kansas*: KAN. STAT. ANN. §§ 58-3301 to 58-3323 (Cum. Supp. 1970); *Minnesota*: MINN. STAT. ANN. ch. 83, §§ 83.01 to 83.19 (1968); *Montana*: MONT. REV. CODES ANN. ch. 21, §§ 67-2101 to 67-2136 (2d Replacement Volume 1970); *New Hampshire*: N.H. REV. STAT. ANN. §§ 356-A:1 to 356-A:22 (Supp. 1970); *New Mexico*: N.M. STAT. ANN. §§ 70-3-1 to 70-3-9 (Supp. 1969); *Ohio*: OHIO REV. CODE ANN. §§ 1707.33-331 (Supp. 1970); *South Carolina*: S.C. CODE ANN. §§ 57-551 to 57-571 (Cum. Supp. 1970); *Tennessee*: TENN. CODE ANN. §§ 48-1602 to 48-1632 (Cum. Supp. 1970); *West Virginia*: W. VA. CODE ANN. art. 2, §§ 32-2-1 to 32-2-3 (1966).

7 See note 4 *supra*. See also Appendix *infra*.

8 *Id.*

9 *E.g.*, ARK. STAT. ANN. § 41-1964 (Cum. Supp. 1969) provides:

Any person, firm, corporation, group, association or the agent or servant of any other firm, corporation, group or association, violating any provision of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars [\$100] nor more than one thousand dollars [\$1,000] or be imprisoned in the county jail not more than sixty [60] days, or by both such fine and imprisonment; and each sale, advertisement or representation in contravention of the provisions of this section shall be deemed a distinct offense and shall subject the offender to such punishment. [Acts 1967, No. 153, § 4, p. 325.]

10 See note 5 *supra*.

11 *E.g.*, MD. ANN. CODE art. 83, § 24 (1969 Replacement Volume). These statutes take a more meaningful approach to the problem of adjusting law to novel fraudulent schemes. The statute says:

(a) The Attorney General shall be authorized from time to time to recommend to the Governor and the General Assembly legislation to protect the public from fraudulent promoters and the schemes which they propose.

12 See note 5 *supra*. See also Appendix *infra*.

13 *E.g.*, MD. ANN. CODE art. 83, § 20 (1969 Replacement Volume) provides that "(b) The term 'merchandise' means any objects, wares, goods, commodities, intangibles, or real estate."

14 See, *e.g.*, MD. ANN. CODE art. 83, § 22 (1969 Replacement Volume). See also note 5 *supra* and Appendix *infra*.

15 See note 11 *supra*.

16 See, *e.g.*, MD. ANN. CODE art. 83, § 22 (1969 Replacement Volume). See also note 5 *supra* and Appendix *infra*.

17 See, *e.g.*, MD. ANN. CODE art. 83, § 22A (1969 Replacement Volume).

18 See, *e.g.*, MD. ANN. CODE art. 83, § 22 (1969 Replacement Volume). See also note 5 and Appendix *infra*.

Although there are several types of "land registration" statutes,¹⁹ the most modern type dealing with interstate land sales practices is the Uniform Land Sales Practices Act.²⁰ Though administered by different state agencies,²¹ the Uniform Act mandates registration of subdivisions,²² registration of a public offering statement,²³ and full and fair disclosure.²⁴ Enforcement is effectuated by means of injunctions,²⁵ investigations,²⁶ cease and desist orders,²⁷ fines and imprisonment,²⁸ and civil remedies.²⁹ The Uniform Act, however, still suffers from the basic inability of state jurisdiction to reach the foreign seller of foreign land who contacts the state citizen by telephone or through the mails.

Although state statutes provide means to impede inequitable practices in the interstate sale of subdivided land, they are hampered either in their after-the-fact application,³⁰ the necessity of proving intent,³¹ or the state's basic lack of jurisdiction.³² More than state control is generally needed in order to rectify the potential abuses in the sale of undeveloped land.

III. Federal Controls

Several times during the 1966 Congressional hearings on proposed interstate land sales legislation, it was suggested that effective state laws, supplemented by the federal postal laws, would be adequate to prevent fraud in interstate land sales.³³ An examination of the postal "False Representations: Lotteries" statute, however, is sufficient to negate any suggestion that the postal law could supplement even

19 See note 6 *supra*.

20 See, e.g., ALASKA STAT. ch. 55, §§ 04. to 46. (Cum. Supp. 1969).

21 See Appendix *infra*.

22 See ALASKA STAT. ch. 55, §§ 04. to 46. (Cum. Supp. 1969); FLA. STAT. ANN. §§ 478.011 to 478.33 (Cum. Supp. 1970-1971); HAWAII REV. LAWS ch. 484, §§ 484-1 to 484-22 (1968); KAN. STAT. ANN. §§ 58-3301 to 58-3323 (Cum. Supp. 1970); S.C. CODE ANN. §§ 57-551 to 57-571 (Cum. Supp. 1970).

23 See, e.g., ALASKA STAT. ch. 55, § 34.55.012. (Cum. Supp. 1969).

24 *Id.*

25 *Id.* § 34.55.020.

26 *Id.*

27 *Id.* § 34.55.024.

28 *Id.* § 34.55.028.

29 The Alaska statute, for example, provides that:

(b) In addition to any other remedies, the purchaser, under (a) of this section, may recover the consideration paid for the lot, parcel, unit or interest in subdivided land together with interest at the rate of six per cent a year from the date of payment, property taxes paid, costs, and reasonable attorney fees less the amount of income received from the subdivided land upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit or interest in subdivided land, he may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six per cent a year on that amount from the date of disposition. *Id.* § 34.55.030.

30 See note 4 *supra*.

31 See note 5 *supra* and Appendix *infra*.

32 1966 Hearings at 113. Herbert E. Wenig, Assistant Attorney General for the State of California, testified that:

California and her sister States today stand helpless at their borders against the out-of-State mail-order defrauder, law evader, and invader. When an out-of-State mail-order promoter is selling lots in a State, without complying with State law, the most that a State can do is obtain an injunction decree in its own courts If an injunction is obtained but the promoter chooses to ignore it, there is nothing a State can do.

33 1966 Hearings at 189.

the more effective state laws.³⁴ For example, the opening language of the statute states that it applies only "Upon evidence satisfactory to the Postmaster General that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of *false representations* . . ."³⁵ (Emphasis added.) Although the statute employs the term "false representations"³⁶ instead of "fraudulent,"³⁷ *no affirmative duty to disclose material facts is present*. Rather, one must only avoid misrepresenting those facts which he discloses.

Criticism was leveled at this flaw in the statute in 1966 by Senator Mondale³⁸ and still seems applicable today. During the 1966 hearings, many examples were presented in which the lack of disclosure of material facts, rather than the misrepresentation of disclosed facts, caused the actual harm.³⁹ It is this lack of affirmative duty to disclose which title XIV (the Interstate Land Sales Full Disclosure Act) of the Housing and Urban Development Act of 1968 (discussed below) seeks to alleviate.⁴⁰

Another suggestion made at the 1966 hearings urged that the Federal Trade Commission acts, in conjunction with the postal regulations, supply adequate safeguards when used to supplement state protective statutes.⁴¹ The first section of the Federal Trade Commission acts which would have applicable value states: "Unfair methods of competition in commerce, and unfair or deceptive acts or practices in commerce, are declared unlawful."⁴² Enforcement of the act is accomplished through the use of cease and desist orders⁴³ and a civil penalty of up to \$5,000 per violation.⁴⁴ This is clearly after-the-fact punishment, however, rather than action calculated to protect the investor before he is financially injured.

The second FTC section which may be used in dealing with advertisements states: "It shall be unlawful for any person, partnership, or corporation to

34 39 U.S.C. § 4005 (Supp. V, 1970), *amending* 39 U.S.C. § 4005 (1964).

35 *Id.*

36 *Id.*

37 39 U.S.C. § 4005 (1964), *as amended*, 39 U.S.C. § 4005 (Supp. V, 1970).

38 1966 *Hearings* at 68. Senator Mondale asked: "What about the problem of misinformation, which is not fraudulent, what about the problem of not providing information about the detrimental aspects, the basic information which the consumer must have to make a rational choice?"

39 *Id.* at 71. An excerpt from promotional literature referring to Golden Palm Acres in Florida is as follows:

They ("smart investors") know that Florida is the fastest-growing major state in the nation with hundreds of thousands of new residents pouring in each year. They know that choice land MUST rise in value because these people cause an insatiable demand for homes, schools, shopping centers, etc. . . . They know that Dade County's population is expected to Double by 1985 . . .

Golden Palm Acres offers you Now the tremendous opportunity to be an investor in this phenomenal area . . . You receive free warranty deed which is title insurable plus a full 50% of all oil, gas, and mineral rights. *Id.* at 40.

In reality, Golden Palm Acres was subject to an easement in a flood control district so that the land could be flooded at any time.

Isolating the problem, Senator Mondale remarked "It is not fraud. It might be some extreme that in a long criminal trial you could prove that they had a duty to mention it, but that is a very tough, long hard case. They just failed to tell anybody that it is a very nice location for a home, it just floods from time to time." *Id.* at 71.

40 See 15 U.S.C. §§ 1705, 1706(d), 1707, 1709 (Supp. V, 1970).

41 1966 *Hearings* at 189.

42 15 U.S.C. § 45(a)(1) (1964), 52 Stat. 114 (1938), *amending*, 38 Stat. 719 (1914).

43 *Id.* § 45(b).

44 *Id.* § 45(l).

disseminate, or cause to be disseminated, any false advertisement."⁴⁵ Violation of this section can give rise to the issuance of a temporary injunction pending determination of a cease and desist order.⁴⁶ The phrase "false advertisement" is inadequate when dealing with undisclosed information since, although a set of facts may give rise to a logical but erroneous inference, the information itself may be merely speculative and the actual facts quite correct.⁴⁷

State law alone or in conjunction with federal postal and/or Federal Trade Commission regulations is inadequate to prepare the land purchaser for an intelligent decision when facts material to such a decision are undisclosed. As was noted above, punishment may be triggered when actual fraud is perpetrated,⁴⁸ and misrepresentation may lead to an injunction,⁴⁹ but a clear mandate to disclose those facts essential to an intelligent investment decision must be supplied by a statute in the nature of the Interstate Land Sales Full Disclosure Act.⁵⁰ Even in those states which have stringent subdivision land sales regulation,⁵¹ the jurisdictional problem is insoluble without adequate federal control.⁵² Although the suggestion that unanimous approval of the Uniform Land Sales Practices Act, together with effective government implementation of the postal and Federal Trade Commission acts, appears to be a feasible alternative to title XIV, a history of state inaction militates against the likelihood of such unanimous approval.⁵³ It is for this reason that title XIV was finally passed.⁵⁴

IV. Title XIV and the Securities Act of 1933

Title XIV (or the Interstate Land Sales Full Disclosure Act) is administered by the Department of Housing and Urban Development. The title, however, is patterned after the Securities Act of 1933. As enacted in 1968, the Act basically provides that the seller of undeveloped land must inform his buyer of all facts

45 *Id.* § 52(a).

46 *Id.* § 53(a).

47 See 1966 *Hearings* at 68. See also note 39 *supra* for a good example of an extremely speculative description and a blatant omission short of outright fraud.

48 Fraudulent advertising: *Federal*: 38 Stat. 719 (1914), as amended, 52 Stat. 114 (1938), 15 U.S.C. §§ 45, 52, 53 (1964); *District of Columbia*: D.C. CODE ENCYCL. ANN. ch. 14, § 22-1411 (1967); *Michigan*: MICH. COMP. LAWS § 445.801 (1967); *Mississippi*: MISS. CODE ANN. § 407.010 (Cum. Supp. 1970-1971); *New Jersey*: N.J. REV. STAT. § 56:8-1 (Cum. Supp. 1970-1971); *Ohio*: OHIO REV. CODE ANN. § 2911.41 (Supp. 1970); *Tennessee*: TENN. CODE ANN. § 39-1910 (Cum. Supp. 1970); *Texas*: TEX. CODE ANN. § 17.12 (Cum. Supp. 1970-1971).

Consumer Fraud: See note 5 *supra*.

Postal fraud: 39 U.S.C. § 4005 (1964), as amended, 39 U.S.C. § 4005 (Supp. V, 1970).

Land Fraud: exemplified in the Uniform Land Sales Practices Act. See note 22 *supra*.

49 *E.g.*, 15 U.S.C. § 53 (1964), 52 Stat. 114 (1938), amending, 38 Stat. 719 (1914).

50 15 U.S.C. §§ 1701-20 (Supp. V, 1970).

51 *E.g.*, *Alaska*: ALASKA STAT. ch. 55, §§ 04. to 46. (Cum. Supp. 1969); *Florida*: FLA. STAT. ANN. §§ 478.011 to 478.33 (Cum. Supp. 1970-1971); *Hawaii*: HAWAII REV. LAWS ch. 484, §§ 484-1 to 484-22 (1968); *Kansas*: KAN. STAT. ANN. §§ 58-3301 to 58-3323 (Cum. Supp. 1970); *South Carolina*: S.C. CODE ANN. §§ 57-551 to 57-571 (Cum. Supp. 1970).

52 1966 *Hearings* at 113. See note 32 *supra* for a statement by Herbert E. Wenig, Assistant Attorney General for the State of California in 1966.

53 See 114 CONG. REC. 15271 (1968) for a statement by Senator Williams of New Jersey concerning state inaction.

54 See H.R. REP. NO. 1785, 90th Cong., 2d Sess. 161 (1968). The report states that "The purpose of full disclosure is to deter or prohibit the sale of land by use of the mails or other channels of interstate commerce through misrepresentation of material facts relating to the property."

which would be material to the buyer in deciding whether or not to purchase the land. Public registration reports must be filed in the ordinary case, and penalties are imposed on the seller for failure to comply with the Act.

Because title XIV is patterned on the Securities Act of 1933, interpretation of the title will most likely follow that of the Securities Act. Interpretation of title XIV along these lines will indeed provide maximum protection for the investor in interstate land.

A look at the principles of securities law which are most adaptable to the interstate land sales area convinces one that the field of "investment contracts" provides the most adequate precedent for interpreting an interstate land sales statute. Although the phrase "investment contract" contained in the definition of security,⁵⁵ is defined in neither the federal nor state securities laws,⁵⁶ the development of case law interpreting the term provides a basis upon which to include within it many varied transactions. It was stated in the case of *SEC v. W.J. Howe Co.*⁵⁷ that:

In other words, an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party⁵⁸

In another Supreme Court case, *S.E.C. v. C.M. Joiner Leasing Corporation*,⁵⁹ it was stated that:

It is clear that an economic interest in this well-drilling undertaking was what brought into being the instruments that defendants were selling and gave to the instruments most of their value and all of their lure. The trading in these documents had all the evils inherent in the securities transactions which it was the aim of the Securities Act to end.⁶⁰

It is this exact type of "economic interest" which has induced many persons to buy worthless land.

There are basically two types of sales which cause problems in interstate land promotions. First, there is land advertised as ideal for retirement purposes;⁶¹ and second, there is land suggesting ideal investment potential.⁶² This distinction must be retained when treating the development of the investment contract in its relation to the interstate sale of subdivided land, since the remedy for overstatement of investment potential is either value-increase information or improvement-probability information,⁶³ whereas the remedy for land-retirement

55 Securities Act of 1933, 15 U.S.C. § 77b(1) (1964).

56 E.g., TENN. CODE ANN. §§ 48-1602 to 48-1632 (Cum. Supp. 1970).

57 328 U.S. 293 (1946).

58 *Id.* at 298.

59 320 U.S. 344 (1943).

60 *Id.* at 349.

61 1964 Hearings at 4. Mr. J. McBride, President of the National Association of License Law Officials, made the distinction by saying:

Now we find that stress is being placed either on holding the land as an investment for resale later at a profit or buying it now, so that when retirement age is reached the land will be paid for and ready for occupation.

62 *Id.*

63 Cf. 1966 Hearings at 14.

potential is a more accurate description of the land itself.⁶⁴ The "economic interest" factor would appear to be more relevant in evaluating investment potential than in purchasing land for eventual residence. The attraction in buying land for investment is usually the ability to resell the land at a later time for a profit; the attraction in buying land on which to reside is usually the location of the land,⁶⁵ the nature of the soil,⁶⁶ or the climate.⁶⁷ The grey area of consideration, of course, arises when land is bought for the purpose of residence at a future date when improvements by the promoter or third party have been completed.⁶⁸ This presents a situation in which land is to be purchased for building, but improvement is conditioned upon the actions of others.

In deciding the case of *Silver Hills Country Club v. Sobieski*⁶⁹ in 1961, the Supreme Court of California stated:

Since the act does not make profit to the supplier of capital the test of what is a security, it seems all the more clear that its objective is to afford those who risk their capital at least a fair chance of realizing their objectives in legitimate ventures whether or not they expect a return on their capital in one form or another.⁷⁰

This notion suggests that it is the nature of investment that the investor be given a "fair chance" of obtaining what the seller suggests is obtainable. As applied to the interstate sale of subdivided land, the implication would be that developers should provide a "fair chance" to purchasers to realize those results which are necessarily suggested in sales literature, telephone conversations, or other methods utilized in selling and advertising.⁷¹ For example, when the prospective purchaser is confronted with a statement such as "*and *** your mineral rights may prove to be worth far more than you can possibly imagine *** because oil is being actively sought in Dade County!*"⁷² this suggestion should be enforced with statistics revealing the success of such explorations as well as the proximity of the offered land to the exploratory wells.⁷³

Silver Hills also suggests that the risk capital for the venture is being solicited from the purchasers or investors, so that the complete success of the scheme depends upon the successful sale of a certain number of memberships.⁷⁴ However, when this rationale is applied to the land development scheme, the possibility of improvement and increase in value of the land sold is potentially nonexistent

64 Cf. *id.* at 22.

65 *Id.*

66 *Id.*

67 *Id.*

68 Cf. 1966 *Hearings* at 14. Mr. Morton Paulson, Business Editor of *Newsjournal*, Daytona Beach, Fla., quoting Mr. Robert Caro of *Newsday*:

I submit to you that the bigger problem in terms of its total implications is what is going to happen to the tens of thousands of elderly couples who do move from the cities and suburbs of the North to partially developed "retirement cities" in undeveloped counties in Florida and the Southwest.

69 55 Cal.2d 811, 361 P.2d 906, 13 Cal. Rptr. 186 (1961).

70 *Id.* at 813, 361 P.2d at 908.

71 See, e.g., 1966 *Hearings* at 10.

72 1966 *Hearings* at 40.

73 *Id.* at 40-41.

74 361 P.2d at 908.

because of the many areas from which purchasers are solicited,⁷⁵ their lack of unity,⁷⁶ and their basic ignorance concerning the land purchased.⁷⁷ If the land is bought for investment and those things which would increase the value of the land are not provided by the developer or some third person, the value will probably not increase.⁷⁸

It must be stated that in analyzing the notions propounded in these securities cases it is not being suggested that interstate land sales should necessarily be regulated under securities laws or by the Securities and Exchange Commission. The analysis is simply helpful in coming to a more meaningful understanding of the problems presented. Notions developed in the area of law on which title XIV was patterned will be helpful in examining and evaluating the probable interpretation of that statute.

For example, in summarizing the criteria used to evaluate the existence of a security, the court in *Los Angeles Trust Deed and Mortgage Exchange v. S.E.C.*⁷⁹ stated:

The terms of the offer, the plan of distribution, the economic inducements held out to the prospects, the results dependent on one other than the purchaser, the common enterprise, all combine herein to make the second trust deed notes "securities," as that term has been defined by the Supreme Court.⁸⁰

These aspects of a transaction are likewise present in the usual interstate land sale promotion of undeveloped subdivided land.⁸¹ The investor must be protected in each phase of the operation in order to prevent schemes such as those publicized in the 1966 hearings.⁸² The "plan of distribution," for example, should be constructed to provide buyers with some chance for future land development.

Two other aspects common to transactions considered "securities" and also to interstate land sales were emphasized in *Blackwell v. Bentsen*.⁸³ It was there stated that a majority of those purchasing citrus groves were inexperienced in this

75 1966 Hearings at 10. Mr. Herbert E. Wenig, Assistant Attorney General for the State of California, stated, in 1964, that:

I wish to emphasize at this point, even if there is full disclosure, the sale of undeveloped lots in a premature and remote subdivision for use as homesites or for investment is inherently fraudulent. Once the promoter sells the lots, the scattered ownership and diverse wishes of lot owners make concerted self-help most difficult. All the risks of creating a livable homesite by the development of an adequate water supply and the installations of streets, sewers and other utilities rest upon the individual buyers. The problem is accentuated by the remoteness of the subdivision.

76 *Id.*

77 *Id.*

78 Mr. Morton Paulson suggested:

If a promoter is permitted to say that "land values in Florida are rocketing up" or that the land offers a "profit potential," or that it is in the "path of progress," then that promoter should be compelled to submit evidence that the land in fact is a worthwhile investment — evidence such as value increases in the past, values of comparable land nearby, and prospects for future demand for the land. 1966 Hearings at 14.

79 285 F.2d 162 (9th Cir. 1960), *cert. denied*, 366 U.S. 919 (1961).

80 *Id.* at 172.

81 *See, e.g.*, note 39 *supra*.

82 *Id.*

83 203 F.2d 690 (5th Cir. 1953), *cert. denied*, 347 U.S. 925 (1954).

type of cultivation⁸⁴ and usually lived far from the actual site of their purchase.⁸⁵ It was evident that "purchase of the land is merely the conduit through which the investment is accomplished."⁸⁶ Except in the example of a purchaser for residence, the same points may be applied to land sales.

The rationale of the "passive investor," "the common scheme," and "economic inducement" was again applied in *Continental Marketing Corporation v. S.E.C.*⁸⁷ in order to include a promotion to invest in beavers under the securities laws. However, the court also pointed out that "Its sales literature, couched in such glowing terms as 'fabulous possibilities' and the 'road to riches,' presented to the prospective purchaser a history of the development of the beaver industry . . ."⁸⁸ This type of advertisement is analogous to advertisements used in the sale of undeveloped land.

During the 1966 hearings, for instance, it became apparent that Florida promoters were selling land in swamps and other remote areas while advertising primarily in terms of the history of Florida's development.⁸⁹ While not provided with the actual potential for value-increase of the land offered for sale, the buyer was given facts and figures seemingly related to his chances for successful investment.⁹⁰ It is this misleading advertising, among other problems, to which some states,⁹¹ and now the federal government, have addressed themselves.⁹²

As early as 1920, the need for a commission to evaluate language used in promotional schemes was recognized in *State v. Gopher Tire & Rubber Co.*⁹³ Dealing with the problems of speculative schemes and the purpose and range of its "Blue Sky Law," the court stated that "The commission is better qualified than the average investor to ascertain whether any real values lie behind mere paper evidences of value."⁹⁴ This rationale was echoed during the 1966 hearings where it was stated that registration with the Securities and Exchange Commission would provide adequate disclosure in the interstate sale of undeveloped land.⁹⁵ Although the prospectus issued to the potential buyer may be technical in certain respects, examination of advertising materials by the Commission would prevent the insertion of misleading facts and the omission of material facts.⁹⁶

84 *Id.* at 692.

85 *Id.*

86 *Id.* at 693.

87 387 F.2d 466 (10th Cir. 1967), *cert. denied*, 391 U.S. 905 (1968).

88 *Id.* at 468.

89 *See, e.g.*, note 39 *supra*.

90 *Id.*

91 States concerned primarily with misleading advertising: *Alabama*: ALA. CODE ch. 45, § 211 (1959); *Arkansas*: ARK. STAT. ANN. § 41-1961 (Cum. Supp. 1969); *District of Columbia*: D.C. CODE ENCYCL. ANN. ch. 14, § 22-1411 (1967); *Illinois*: ILL. ANN. STAT. § 157.21a (Cum. Supp. 1971); *Iowa*: IOWA CODE ANN. § 713.24 (Cum. Supp. 1970); *Kentucky*: KY. REV. STAT. ANN. ch. 434, § 434.270 (1969); *Louisiana*: LA. REV. STAT. tit. 51, § 411 (1965); *Mississippi*: MISS. CODE ANN. § 2003.5 (Cum. Supp. 1968); *North Dakota*: N.D. CENT. CODE § 51-12-01 (Supp. 1969); *South Dakota*: S.D. CODE ch. 22-41, § 22-41-10 (1967); *Texas*: TEX. REV. CIV. STAT. ANN. ch. 10, art. 5069-10.01 to 10.08 (1971); *Utah*: UTAH CODE ANN. ch. 4, § 76-4-1 (1953); *Virginia*: VA. CODE ANN. ch. 4, § 59.1-44 (1968 Replacement Volume); *West Virginia*: W. VA. CODE ANN. art. 2, §§ 32-2-1 to 32-2-3 (1966).

92 Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1703(a)(2)(B) (Supp. V, 1970).

93 146 Minn. 52, 177 N.W. 937 (1920).

94 *Id.* at 53, 177 N.W. at 938.

95 1966 Hearings at 164.

96 *Id.*

In deciding the status of undivided equity interests in land syndications, the court in *S.E.C. v. Royal Hawaiian Management Corporation*⁹⁷ set out essential disclosure elements for investment purposes. The court said:

The brochures used by the defendants in their offerings are lacking in any solid information from which an investor may ascertain—

- a. the background of RHMC and its sources, if any;
- b. the nature and extent of its commitments in connection with Poipu and Awakee acquisitions;
- c. the impact of those commitments upon its ability to carry out the terms of its contracts and agreements with investors;
- d. the nature and quality of the title, if any, that RHMC may have in the Poipu and Awakee tracts⁹⁸

One may obviously see the necessity for such information where undeveloped land is advertised as possessing extreme investment potential from improvements to be installed by the developer. It is essential that the investor know the preparations which have been made and the contracts which have been signed. Without this information, the investor is unable to evaluate the chances for completion of the improvements and the increased land value. The "nature and quality of title," however, are critical to both investment and residential goals.⁹⁹

Two additional points must be mentioned in relation to the notion of what is commonly known as "The Howey Formula" (transactions in which profits are derived through the efforts of third persons other than investors are considered securities¹⁰⁰) and also in relation to the general interpretation of state Blue Sky Laws. As has been demonstrated, undeveloped land sold in interstate commerce presents a situation closely analogous to that described by the Howey formula—namely, profits are made through the efforts of others. It should be noted that the formula has been widely accepted in both federal and state courts.¹⁰¹ The suggestions in the 1966 hearings that interstate land sales should be regulated by the Securities and Exchange Commission resulted from the fact that through the Howey formula and its general acceptance, securities law had reached the position where inclusion of real estate would not have violated established principles.¹⁰² Also, the S.E.C. and state securities commissions had handled registration and prospectus filing and dissemination for many years.¹⁰³

A brief look at interpretations of the purposes of states' Blue Sky Laws will give some idea of the potential adaptability of these laws to the sale of undeveloped land promotional schemes. The goals of prevention of fraud and deceit,¹⁰⁴ unnecessary risk,¹⁰⁵ and the need for "reasonable licensing and registra-

97 CCH FED. SEC. L. REP. ¶ 91,982 (D. Hawaii 1967).

98 *Id.* ¶ 96,338.

99 See note 39 *supra*.

100 *S.E.C. v. Howey*, 328 U.S. 293, 298 (1946).

101 *United States v. Herr*, 338 F.2d 607, 609-10 (7th Cir. 1964), *cert. denied*, 382 U.S. 999 (1966); *Roe v. United States*, 287 F.2d 435, 438 (5th Cir. 1961), *cert. denied*, 368 U.S. 824 (1961); *Blackwell v. Bentsen*, 203 F.2d 690, 693 (5th Cir. 1953), *cert. denied*, 347 U.S. 925 (1954); *S.E.C. v. Orange Grove Tracts*, 210 F. Supp. 81, 82 (E.D. Mass. 1962); *Emery v. So-Soft, Inc.*, 199 N.E.2d 120, 123 (Ohio Ct. App. 1964).

102 Compare *S.E.C. v. Howey*, 328 U.S. 293, 298 (1946) with note 39 *supra*.

103 1966 Hearings at 90.

104 *State v. Weigel*, 165 N.W.2d 695, 698 (N.D. 1969).

105 *Bronaugh v. R.E. Dredging Co.*, 16 Ohio 2d 35, 242 N.E.2d 572, 576 (1968).

tion requirements designed to protect the public from its own stupidity, gullibility, and avariciousness"¹⁰⁸ concerning the sale of securities are also relevant considerations in the sale of undeveloped land. Other considerations expressed in dealing with the state laws have been the need to construe these statutes liberally to afford maximum protection to the public¹⁰⁷ and to confront directly "the capacity for harm and danger to the public"¹⁰⁸ by realizing that the Act "is designed to be prophylactic if possible, remedial only if necessary."¹⁰⁹ Since one of the main criticisms leveled against state laws and the postal acts has been their after-the-fact application,¹¹⁰ interpretation of the securities laws as "prophylactic" would have been a possible solution to such criticism.

As was stated in *Oil Lease Service, Inc. v. Stephenson*:¹¹¹

In determining whether an instrument is a security within the meaning of the code, the court may look through mere form to substance. (*Ogier v. Pacific Oil & Gas Development Corp.*, 132 Cal. App. 2d 496, 282 P. 2d 574) and consider the facts and circumstances surrounding its execution to ascertain the true intent of the parties, their mutual purposes and expectations and the potentialities of the rights acquired by the purchaser.¹¹²

An examination of the investment-type interstate land sale transaction reveals a situation strikingly similar to the typical investment contract. However, the central consideration is the nature of the analysis used in determining the existence of the security. In seeking to ascertain the "true intent of the parties," their "mutual purposes and expectations" and the "potentialities of the rights acquired by the purchaser,"¹¹³ the court has isolated the exact criteria which conceal the inequities perpetrated upon the public. In most instances a look at the "intent of the parties" is sufficient to disclose the reckless nature of the promotion.

Identifying the "mutual purposes and expectations" of the parties would also aid in differentiating the legitimate developer from the irresponsible promoter. For example, as was pointed out in the 1966 hearings, certain developers went out of their way to supply air transportation to prospective buyers to see the land offered.¹¹⁴ These men provided a great service to the public.¹¹⁵ The "mutual purposes and expectations" of parties to such promotions seems to be mutually complementary with satisfaction derived by both the promoter and the purchaser. However, an investigation into the "mutual purposes and expectations" of parties to one of the less humanitarian schemes¹¹⁶ presents "purposes and expectations" mutually exclusive. For example, the "developer" is concerned only in selling his land regardless of the effect upon the buyer, and the buyer is interested in seeking

106 *Id.*

107 *State v. March*, 247 Ore. 266, 428 P.2d 894, 896 (1967).

108 *Jackson v. Robertson*, 90 Ariz. 405, 368 P.2d 645, 648 (1962).

109 *Id.*

110 1966 *Hearings* at 198.

111 162 Cal.App. 2d 100, 327 P.2d 628 (1958).

112 *Id.* at 104, 327 P.2d at 632.

113 *Id.*

114 1966 *Hearings* at 201-08 (testimony of Robert P. McCulloch, Jr., Vice President, McCulloch Properties, Inc., Los Angeles, Cal.).

115 See generally 1966 *Hearings* at 204.

116 See note 38 *supra*.

a fine plot of land upon which to build his residence for retirement or in which to invest his money. If the seller has no concern whatever for the potential investor, the purposes and expectations of the parties cannot complement each other. Of course, the same may be said about the "potentialities of the rights acquired by the purchaser." He may only judge his potentialities and make an intelligent investment in relation to the clarity of information, honesty, and mutual purpose which the promoter exercises in dealing with him.

One final consideration used in the securities field which also applies to the interstate sale of undeveloped land is demonstrated by the case of *S.E.C. v. Ralston Purina Co.*¹¹⁷ In determining the correct analysis which must be applied in interpreting the "private offering" exemption of section 4(1) of the Securities Act of 1933,¹¹⁸ the court stated that "The focus of inquiry should be on the need of the offerees for the protections afforded by registration."¹¹⁹ This consideration is also of primary importance in the subdivision sales area since the purchasers are usually quite vulnerable to deception because of the vast area from which buyers are sought,¹²⁰ the purchasers' ignorance concerning the offered land,¹²¹ and the distance between the buyers and the land sold.¹²² These investors must be provided maximum protection. It is essential, therefore, that title XIV be the best attempt this country may provide to eliminate existing abuses.

The principles derived from the examination of investment securities¹²³ must now be considered in relation to the Interstate Land Sales Full Disclosure Act¹²⁴ in order to critically evaluate the Act's potential for solving the problems of the sale of undeveloped land.

V. The Legislative Development of Title XIV

The first major discovery of losses incurred through fraudulent practices in the sale of land was made in the hearings conducted by the Subcommittee on Frauds and Misrepresentations Affecting the Elderly of the Special Committee on Aging of the United States Senate, May 18, 1964.¹²⁵ Because of the many inequities found in those proceedings, follow-up hearings were held before a Subcommittee of the Committee on Banking and Currency of the United States Senate, on June 21, 22 and August 18, 1966. Finally, two days of hearings were held on S. 275, which was a full disclosure statute essentially the same as title XIV.

Hearings were then held between March 5 and March 22, 1968, before the Subcommittee on Housing and Urban Affairs of the Committee on Banking and Currency United States Senate,¹²⁶ concerning proposed housing legislation of

117 346 U.S. 119 (1953).

118 Securities Act of 1933, 15 U.S.C. § 77d(2) (1964).

119 346 U.S. at 127.

120 1966 Hearings at 10.

121 *Id.* at 9.

122 *Id.* at 10.

123 Compare *S.E.C. v. Howey*, 328 U.S. 293, 298 (1946) with note 39 *supra*.

124 15 U.S.C. §§ 1701-20 (Supp. V, 1970).

125 1964 Hearings.

126 Hearings on Prepared Housing Legislation for 1968 before the Subcomm. on Housing and Urban Affairs of the Senate Comm. on Banking and Currency, 90th Cong., 2d Sess., pt. 1 (1968).

1968—of which title XIV was to become an integral part. Remarkably little was said about the title itself. Senator Williams did, however, remark to Robert C. Weaver, Secretary of the Housing and Urban Development Department:

As you know, there is a great deal of sentiment that the interstate sale of underdeveloped land be regulated through full disclosure. The original bill which I introduced put it in tandem with the Securities and Exchange Commission provisions and gave jurisdiction to the SEC. I have amended the proposed legislation to give jurisdiction to HUD.¹²⁷

Another witness at the hearings, Mr. Fred C. Tucker, Jr., Chairman of the Realtors' Washington Committee, National Association of Real Estate Boards, stated that "... the author of the bill has substituted the Department of Housing and Urban Development for the Securities and Exchange Commission in order that the bill could be offered as part of the pending housing bill."¹²⁸ Mr. Tucker went on to say that his organization was in favor of rejecting this title¹²⁹ because it was too drastic of a solution to the problem.¹³⁰ He remarked:

It would take 'after the fact' hearings by HUD to ascertain the veracity of statements of fact set forth in the required registration statements. We believe that the Post Office would be as effective as HUD in quickly putting an end to the promoters of fraudulent schemes by denying them use of the mails.¹³¹

Another reference to the Full Disclosure Act was made in a listing of National Association of Home Builders positions not covered in its official statement. The item refers to S. 275, the Interstate Land Sales Disclosure bill, and says, "NAHB favors a substitute approach which would give HUD, rather than SEC, this authority, and which would utilize the existing enforcement powers of the Federal Trade Commission to carry out its sanctions."¹³² As has been mentioned, title XIV does have HUD rather than SEC as its administering agency.¹³³

The Committee on Banking and Currency which presented its report to the Senate on May 15, 1968, in its explanation of the bill (S. 3497), stated that "The necessity for this legislation was made very apparent during hearings held by the Special Committee on Aging in 1964, and by the Securities Subcommittee of this committee in 1966 and 1967."¹³⁴ It was mentioned that "false and misleading promises" had been utilized in transactions affecting the elderly¹³⁵ and that more than \$50 million in losses between 1962 and 1966 had been reported by the Post Office Department.¹³⁶

The basic requirements of the bill were set out in this way:

127 *Id.* at 61.

128 *Id.* at 456.

129 *Id.*

130 *Id.*

131 *Id.* at 466.

132 *Id.* at 322.

133 Interstate Land Sales Full Disclosure Act 15 U.S.C. § 1715 (Supp. V, 1970).

134 S. REP. No. 1123, 90th Cong., 2d Sess. 109 (1968).

135 *Id.*

136 *Id.*

The seller of underdeveloped land covered by this title would be required to inform the purchaser not only of the desirable aspects, but also of any undesirable aspects. The purchaser will then be able to make an intelligent decision.¹³⁷

It was also pointed out that the bill was not meant to impede any state real estate commission, but rather was to cooperate with state authorities.¹³⁸

Although the foregoing somewhat emphasizes the majority opinion of the Committee, the remarks of the minority are interesting in light of the striking similarities between subdivision sales problems and investment contracts or "securities." The minority,¹³⁹ for example, while concurring in the need to protect the public from unscrupulous promoters¹⁴⁰ and to prevent such promoters from "taking advantage of loopholes in State and Federal laws,"¹⁴¹ was disturbed by the fact that:

This bill, which places the administrative powers in the Department of Housing and Urban Development rather than in the Securities and Exchange Commission or the Department of Justice, as did other proposals, was not subject to public hearings.¹⁴²

S. 275 which had received much support from the federal agencies themselves had the Securities and Exchange Commission, not the Housing and Urban Development Department, as its administering body.¹⁴³ For example, a statement made by the Housing and Urban Development Department said:

In our view, the SEC is best equipped to receive and record the registration statements required under the bill since the Commission already performs a similar role regarding administration and enforcement of registration and disclosure requirements relating to the sale of corporate stocks and other securities.¹⁴⁴

Besides being concerned with the change of the administering agency, the group was also greatly influenced by a poll of governors taken in regard to the 1966 proposal. The results of the poll were stated as follows:

In answer to letters written to all 50 Governors on the question of the 1966 SEC proposal of Federal land sales legislation, we received 42 replies, 32 of which opposed the proposed Federal statute and expressed a willingness to take steps needed to handle the problem on a state level. Only four favored the land sales bill requiring registration with a Federal agency, and six gave vague or noncommittal replies.¹⁴⁵

137 *Id.* at 110.

138 *Id.* at 111.

139 Mr. Wallace F. Bennett from Utah, Mr. John G. Tower from Texas, and Mr. Bourke B. Hickenlooper from Iowa.

140 S. REP. No. 1123, 90th Cong., 2d Sess. 197 (1968).

141 *Id.*

142 *Id.*

143 *Id.* at 199.

144 *Id.*

145 *Id.* at 200.

In essence, then, the minority's main exception was to the lack of hearings and its concurrence with the governors that this was a state problem.

On May 24, 1968, Senator Williams of New Jersey, in supporting the Interstate Land Sales Full Disclosure Act stated that the interstate sale of undeveloped land had grown to an estimated \$1 billion per year,¹⁴⁶ that a great number of such sales had been made by long-distance conversations, personal solicitations, and that the buyer seldom sees the land and is usually forced to rely on the salesman's representations.¹⁴⁷ The Senator then stated that "The only purpose of this legislation is to give the purchaser the necessary information upon which he can make his own investment decisions."¹⁴⁸

An amendment to the bill which provided for an exemption from the Act was presented by Senator Fulbright on May 28, 1968, and was subsequently approved. The amendment read as follows:

The sale or lease of real estate which is free and clear of all liens, encumbrances, and adverse claims [is exempt from the act] if each and every purchaser or his or her spouse has personally inspected the lot which he purchases and if the developer executes a written affirmation to that effect to be made a matter of record in accordance with rules and regulations of the Secretary.¹⁴⁹

The Senator's major premise seemed to be that ". . . it is hard to see how a purchaser would not have an opportunity to know what he is buying if he has inspected the lot himself."¹⁵⁰ It may be submitted, however, that the exact distinction between the buyer of land for residence and the buyer of land for investment purposes is adequate to rebut the Senator's argument. For example, although a person may be adequately informed about land on which he intends to live by viewing the land, he may not be able to ascertain the potential value increase by seeing the land alone.

On May 28, 1968, Senator Williams pointed out that probably the major impetus for interstate land sales legislation at this time was the speech made by President Johnson on February 16, 1967, concerning consumer protection.¹⁵¹ The President said:

The interstate mail order sales of such land runs into many millions of dollars each year. "Slippery language and omission of important facts" have given too many buyers grossly distorted impressions of the land they later purchased.

They have wasted much of their life savings on a useless piece of desert or swampland. But only the Federal Government can have effective authority over interstate mail order sales.

I recommend the Interstate Land Sales Full Disclosure Act of 1967 to afford the public greater safeguards against sharp and unscrupulous practices.¹⁵²

146 114 CONG. REC. 14974 (1968).

147 *Id.*

148 *Id.*

149 *Id.* at 15270.

150 *Id.* at 15271.

151 *Id.*

152 *Id.*

When S. 3497 was finally referred to the House Committee on Banking and Currency,¹⁵³ the House struck all of the Senate bill after the enacting clause and inserted its own bill (H.R. 17989¹⁵⁴ which did not include an Interstate Land Sales Act). This was not accepted by the Senate and a conference committee of both bodies filed a conference report on July 23, 1968.¹⁵⁵ The report stated that "The purpose of full disclosure is to deter or prohibit the sale of land by use of the mails or other channels of interstate commerce through misrepresentation of material facts relating to the property."¹⁵⁶

All the exemptions of the Senate bill were adopted except for section 1702(a)(10) which provided that:

Absent any purpose to evade the provisions of the title, the sale or lease of real estate is exempt where the purchaser or his or her spouse has personally inspected the lot purchased. However, to gain the exemption, the real estate must be free and clear of liens, encumbrances, and adverse claims.¹⁵⁷

Title XIV of the Interstate Land Sales Act was, then, essentially the same as title XIII of the Senate bill. The Conference Report was accepted by both the House¹⁵⁸ and Senate¹⁵⁹ and became law on August 1, 1968.¹⁶⁰

VI. Analysis of Title XIV

Having examined the problems presented by the interstate sale of subdivided land, the inability of state laws combined with postal and Federal Trade Commission acts to adequately remedy these problems, analogous securities problems, and federal proposals to eliminate the existing "loopholes," one must examine the state of the law as expressed through title XIV to evaluate the protection provided for the investor. Particular emphasis will be addressed in this Note to those provisions of the statute which seem to attack areas formerly unprotected by state and federal law.

Following the definitions presented in section 1701 of the Act,¹⁶¹ section 1702 begins:

Sec. (a) Unless the method of disposition is adopted for the purpose of evasion of this title, the provisions of this title shall not apply to—

(1) the sale or lease of real estate not pursuant to a common promotional plan to offer or sell fifty or more lots in a subdivision.¹⁶²

Although some state laws provide exemptions for promotional plans to sell or offer

¹⁵³ *Id.* at 15532.

¹⁵⁴ *Id.* at 20597.

¹⁵⁵ H.R. REP. No. 1785, 90th Cong., 2d Sess. (1968).

¹⁵⁶ *Id.* at 161.

¹⁵⁷ 15 U.S.C. § 1702(a)(10) (Supp. V, 1970).

¹⁵⁸ 114 CONG. REC. 23691 (1968).

¹⁵⁹ *Id.* at 23292.

¹⁶⁰ *Id.* at 25004.

¹⁶¹ Interstate Land Sales Full Disclosure Act 15 U.S.C. §§ 1701-20 (Supp. V, 1970).

¹⁶² *Id.* § 1702(a).

to sell up to twenty-five lots in a subdivision,¹⁶³ the "promotional plan" aspect is the more relevant consideration.

The usual interstate sales scheme deals with far more than fifty lots; however, it is the scheme itself which is the basis of proposed development or predicted land value increases.¹⁶⁴ Improvements suggested, value increase assured, and the feasibility of future residence must all be considered in evolving the notion of "promotional plan." These considerations take land sales out of a pure real estate context and necessitate registration. As has been stated, the number fifty is reasonable in terms of an interstate venture as long as the promoter is prevented from dividing his land into smaller parcels or developments for the purpose of circumventing the Act's provisions.¹⁶⁵ A strict evaluation of applications for exemptions must be made by the Office of Interstate Land Sales Registration (OILSR) since, "Unlike the federal securities laws, an exemption from the Interstate Land Sales Full Disclosure Act literally serves also to exempt one from the liability provisions of the Act."¹⁶⁶

Subsection (a) (3) of the exemption provisions¹⁶⁷ states that:

Sec. (a) Unless the method of disposition is adopted for the purpose of evasion of this title, the provisions of this title shall not apply to—

. . . .

(3) The sale or lease of any improved land on which there is a residential, commercial, or industrial building, or to the sale or lease of land under a contract obligating the seller to erect such a building thereon within a period of two years.¹⁶⁸

This section is addressed primarily to the sale of land for the purpose of residence.

It became evident from the 1964 and 1966 hearings that much of the land sold was incapable of supporting buildings.¹⁶⁹ By allowing this exemption where the building already exists or where the burden of seeing to its construction is put upon the seller, the problem is eliminated for the buyer. This provision should be effective in preventing sellers from suggesting unsuitable land for building purposes. The necessity for the contract between the seller and buyer is seen in situations where buildings which would have increased land value were not built. This problem usually arises in the context of off-site improvements to be built. Classification of such transactions under the "investment contract" rationale is appropriate since profits are "to come from the efforts of others."¹⁷⁰

One exemption which focuses upon the land for residence aspect of inter-

163 *E.g.*, KAN. STAT. ANN. § 58-3301(6) (Cum. Supp. 1970).

164 1966 *Hearings* at 10.

165 15 U.S.C. § 1702(a).

166 Feferman, *Interstate Land Sales Full Disclosure Act*, 33 TEXAS B.J. 628 (1970).

167 15 U.S.C. § 1702(a) (3) (Supp. V, 1970).

168 *Id.*

169 See the 1966 *Hearings* at 10. There Mr. Morton Paulson, Business Editor, News-journal, Daytona Beach, Florida, states that:

By contrast, much of the acreage sold by mail is in such condition that it could not be developed, even if there were any demand for development, without heavy expenditures for surveys, drainage, clearing, filling, and roadbuilding.

170 1966 *Hearings* at 13.

state land sales, but which seems inadequate in regard to the investment-type sale is subsection 10.¹⁷¹ This provision states:

(10) the sale or lease of real estate which is free and clear of all liens, encumbrances, and adverse claims [is exempt from the act] if each and every purchaser or his or her spouse has made a personal on-the-lot inspection of the real estate which he purchased and if the developer executes a written affirmation to that effect to be made a matter of record in accordance with rules and regulations of the Secretary.¹⁷²

Again, the distinction between the sale for residence and the investment sale is critical in the area of interstate sale of subdivided land. When a person is buying a lot on which to build his residence, a good look at the plot is in most instances sufficient to guard against an unscrupulous promotion scheme. He sees the kind of terrain, experiences the climate, and can then make up his mind whether or not this is the place where he wants to live. However, the person buying land for the purpose of reselling at a later date for a profit does not receive the same protection from a personal inspection of the land. Analogizing to the field of securities, it may be said that:

Disclosure of the history and operations of a business may provide guidance for investing in that business. Disclosure of the topography, title and environment of a parcel of real estate betrays little about its investment potential.¹⁷³

This exemption appears to provide a total exemption from the Act to the promoter who sells his plots by suggesting extravagant investment potential and who manages to get the potential investor to visit the plot. The possibility of a promoter paying the buyer's expenses to visit the lot is unlikely, however, in most instances. Yet it must be remembered that many such sales have occurred in tourist states where the buyer is already present and is given the full sales treatment. Therefore, subsection 10 should be amended to eliminate this exemption, and other provisions of the Act empowering the Secretary to elicit additional information¹⁷⁴ should be construed to provide the prospective investor with protection as adequate as is afforded to the residential buyer.

Another exemption is provided by the fact that:

(b) The Secretary may from time to time, pursuant to rules and regulations issued by him, exempt from any of the provisions of this title any subdivision or any lots in a subdivision, if he finds that the enforcement of this title with respect to such subdivisions or lots is not necessary in the public interest and for the protection of purchasers by reason of the small amount involved or the limited character of the public offering.¹⁷⁵

Title XIV was passed to remedy large-scale promotions and not to harass

171 15 U.S.C. § 1702(a)(10) (Supp. V, 1970).

172 *Id.*

173 Stern, *Proposed Federal Regulations of Subdivision Sales*, 43 L.A. B. BULL. 287 (1968).

174 15 U.S.C. §§ 1706, 1714 (Supp. V, 1970).

175 *Id.* § 1402(b).

sellers of limited holdings selling most of their land within their state boundaries.¹⁷⁶ This provision allows the Secretary some discretion so as not to overburden the legitimate developer where the protection of the Act is unnecessary.

Section 1703¹⁷⁷ insures that a purchaser is either provided with a property report or he may void his contract at his own option.¹⁷⁸ He may also "... revoke such contract or agreement within forty-eight hours, where he has received the property report less than forty-eight hours before he signed the contract or agreement . . ."¹⁷⁹ "To employ any device, scheme, or artifice to defraud"¹⁸⁰ or to materially misrepresent information relied upon by the buyer is made expressly unlawful.¹⁸¹ Section 1703 seeks to prevent irresponsible schemes by requiring registration and a property report to disclose facts essential to an understanding of the purchase or investment made. However, the revocation of contract provision confronts the abuses already mentioned in this area only if the report which the buyer ultimately receives possesses the information necessary for an intelligent investment decision or purchase.

Information regarding topography and climate in residence promotions and financial records and value increases in investment promotions should be provided. The beneficial nature of section 1703 may only be evaluated in terms of what information is required for registration purposes and for inclusion in the property report. For example, if the purchaser is provided with a report which contains true but inadequate information, he will be in a position similar to that of the person who receives materials advertising land with all the features identified but the fact of a flood control easement omitted.¹⁸² The information in the report must be material, essential, and meaningful in terms of what the buyer is buying.

Section 1703, while possessing some of the basic characteristics of the state consumer fraud and false advertising statutes,¹⁸³ contains the additional ingredient of required before-the-fact disclosure through registration—and primarily through the property report. It is for this reason that the report must contain necessary information for an intelligent decision on the part of the buyer. Without an adequate disclosure requirement, section 1703 would be little better than many of the existing state statutes.

Under section 1704, information contained in, or filed with, the statement of record is made available to the public.¹⁸⁴ If the report furnished to the prospective buyer contains insufficient information for his particular transaction, he may obtain information contained in or submitted with the statement of record. For example, if a purchaser for investment does not have adequate information concerning business solvency of corporations or other organizations which are to com-

176 See generally 1966 Hearings at 67.

177 15 U.S.C. § 1703 (Supp. V, 1970).

178 *Id.* § 1703(b).

179 *Id.*

180 *Id.* § 1703(a)(2)(A).

181 *Id.* § 1703(a)(2)(B).

182 See generally note 39 *supra*.

183 E.g., ALA. CODE ch. 45, § 211 (1959) (false advertising); ARIZ. REV. STAT. ANN. ch. 10, §§ 44-1521 to 44-1534 (1967) (consumer fraud). The false advertising statutes are generally aimed at prohibiting misleading advertising while the consumer fraud statutes attempt to keep abreast of modern schemes used to defraud consumers.

184 15 U.S.C. § 1704(d) (Supp. V, 1970).

plete work which will substantially increase the value of his land, he may be able to obtain such facts from the statement of record.

Information and documents required as part of the statement of record are presented in section 1705. This section requires a statement of the topography,¹⁸⁵ the relation of the lots to existing streets and roads,¹⁸⁶ condition of title,¹⁸⁷ statement of general terms and conditions,¹⁸⁸ present access, sewage, and other public utilities plus distance to nearest municipalities, and the nature of improvements to be installed by the developer and his estimated schedule for completion.¹⁸⁹ Also required are a copy of articles of incorporation or other association,¹⁹⁰ copies of instruments witnessing easements,¹⁹¹ financial statements required by the Secretary,¹⁹² and "such other information and such other documents and certifications as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers."¹⁹³

This section seems to possess the potential to cure the problems formerly faced in the interstate sale of subdivided land. Careful scrutiny on the part of the Secretary in conjunction with strict compliance with the provisions of section 1705 would leave little room for deception or fraud. The purchaser of land for the purpose of residence would be protected by the disclosure of topography, title, nearness to cities, improvements, access, and easements, while the purchaser for investment would be protected by these same facts plus articles of association and incorporation, financial statements, and additional information required by the Secretary. The Secretary could require land value increase reports; and if the value increase were expected to result from improvements constructed by the developer, the Secretary could require disclosure of the contracts for completion or the resources available for completion. Though not explicitly stated in section 1705, it appears that if an investment sales promotion were proposed with profits to come from the efforts of persons other than the buyer or developer, the Secretary could require information regarding the probable success of the completion of such efforts.

In some situations this information could be critical. For example, if a promoter offers to sell land somewhere in the vicinity of a model city, such as the Disney Project in Florida,¹⁹⁴ the purchaser should be allowed to obtain information regarding the probability of completion of the project, as well as the distance in miles of his plot from the project site. Elements essential to the potentialities of his investment also include the desirability and capacity of his land to afford expansion for the project or for development in the near vicinity. At the very least, he should be allowed to obtain facts sufficient to assure him of the legitimacy of the promotion and that he is investing his money with a fair chance of obtaining the suggested profits.

185 *Id.* § 1705(2).

186 *Id.*

187 *Id.* § 1705(3).

188 *Id.* § 1705(4).

189 *Id.* § 1705(5).

190 *Id.* § 1705(7).

191 *Id.* § 1705(10).

192 *Id.* § 1705(11).

193 *Id.* § 1705(12).

194 The Disney Project was mentioned briefly in the 1966 *Hearings* at 10.

Sections 1706(b)-(f) essentially provide for suspension of a statement of record for inaccuracy or incompleteness,¹⁹⁵ changes in material facts,¹⁹⁶ or untruth or omissions.¹⁹⁷ The sections further provide that:

The Secretary or anyone designated by him shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the developer, any agents, or any other person, in respect of any matter relevant to the examination.¹⁹⁸

Addressing itself directly to the problem left open by the state false advertising statutes, the postal statutes, and the Federal Trade Commission acts, the section goes beyond the prevention of fraud and intentional deception and aims at any material facts which seek to mislead. However, the section is important primarily for its express language dealing with the omission as well as misrepresentation of material facts. Now, the developer may not provide the facts he wishes, and neglect to mention those specifics detrimental to his promotion.

Two aspects of section 1706 are particularly susceptible to an interpretation which would remedy the problems common to residential as well as investment purchases. The first aspect deals with revelation of material facts.¹⁹⁹ If the revelation of material facts is a necessity, it is obvious that such facts as title, topography, and others mentioned in section 1705 must be disclosed. However, in the case of land bought for investment, this section could be interpreted to include facts such as the probability of completion of structures and improvements.

The second aspect of the section which could provide an added amount of protection if liberally construed is the portion dealing with the production of records of "the developer, any agents, or any other person, in respect of any matter relevant to the examination."²⁰⁰ Again, this section could well cover the investment sale and the sale of residence by calling in any records necessary to insure the legitimacy of a particular promotion. In the event a particular subdivision was already registered and it was subsequently learned that potential investors were receiving advertising materials suggesting extraordinary investment potential with profits dependent solely on the completion of structures by third persons, those in control of construction could be called to give some idea of the progress, estimated dates, and probabilities of completion. This information would be essential to a decision by the Secretary whether or not to suspend the registration.

Section 1707 refers to the information required in the property report and states that such reports "need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1705."²⁰¹ A serious problem is presented by this section because paragraphs (7) to (11) are the exact paragraphs which provide protection for the investment-type sale. The property report which is distributed to the purchaser before sale would provide the title, access, and other

195 15 U.S.C. § 1706(b) (Supp. V, 1970).

196 *Id.* § 1706(c).

197 *Id.* § 1706(d).

198 *Id.* § 1706(e).

199 *Id.* § 1706(d).

200 *Id.* § 1706(e).

201 *Id.* § 1707(a).

considerations necessary to make an intelligent decision in buying land for residence. The investment buyer is provided with the same type report, but without information concerning the corporation or association, financial reports, and value-increase statistics which are essential to an intelligent investment decision. Section 1707 should be amended to provide that the property report include section 1705 in its entirety—or at least as much as is necessary to protect the investment purchaser as well as the purchaser for residence. An alternative procedure of value to the sophisticated investor would be to amend section 1704(d) to allow copies of the statement of record to be furnished to prospective land purchasers without cost upon application.

Title XIV does not pre-empt state law. Although pre-emption was vigorously urged by at least one witness at the 1966 hearings,²⁰² section 1708 provides that the Act be administered in cooperation with state authorities.²⁰³ Also pointed out is the fact that materials filed with state agencies may be found acceptable as a statement of record,²⁰⁴ and the Act in no way affects the jurisdiction of such agencies.²⁰⁵

Because of the lack of "political expediency" involved in attempting to pre-empt state law in this area,²⁰⁶ it was hoped that the states would not repeal or cease to enact legislation aimed at subdivision sale control, but would somehow be stimulated to enact such legislation.²⁰⁷ Section 1708 makes it clear that the more vigorous the campaign at the state level, the less problem the developer will have in complying with federal law. If the interstate sale of subdivided land is not to be considered an investment security, the adoption of the Uniform Land Sales Practices Act, supplemented by the Interstate Land Sales Full Disclosure Act, should provide adequate protection in most instances. However, this assumes that title XIV will be liberally construed so as to provide maximum protection to the investor as well as to the purchaser for residence.

Probably the most interesting development to be viewed as the administration of the statute proceeds will be the development of section 1709 on civil liabilities.²⁰⁸ There is little doubt after looking at the legislative history of the Act that it is intended to be administered as a "full disclosure" statute only.²⁰⁹ However, it was enacted to remedy fraud and deception in the interstate sale of

202 1966 *Hearings* at 150. Mr. Jon Moyle, Counsel to the Florida Installment Land Sales Board, testified:

My position, Senator Mondale, is, if any Federal legislation is enacted, it should preempt the field and it should do a complete and adequate job of supervising and regulating this industry and if it did preempt the field and it did do what I personally thought was an adequate job in controlling this type industry, I would wholeheartedly endorse it.

203 15 U.S.C. § 1708 (Supp. V, 1970).

204 *Id.* § 1708(a).

205 *Id.* § 1708(b).

206 *See, e.g.,* 1966 *Hearings* at 161-62:

Senator Mondale. I can't imagine this, Senator, the States agreeing to a bill that in effect takes over completely and totally Federal control of real estate at the local level, provided it is being sold in interstate commerce, invests all that authority in some Federal body.

Senator Williams. I can't either; but not only that, as a practical matter it would never happen. It would never happen.

207 *See generally* 1966 *Hearings* at 169.

208 15 U.S.C. § 1709 (Supp. V, 1970).

209 *See* Section V *supra*.

land, and it potentially contains what is necessary to provide maximum protection.

Section 1709 provides that any person who acquires a lot in a subdivision may sue the developer who sold or leased him the lot if the statement of record was in effect and "contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein."²¹⁰ The purchaser of the lot is given the right to sue any developer or agent who sells or leases a lot in a subdivision "by means of a property report which contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein."²¹¹ Damages are set out in subsection (c) which states:

(c) The suit authorized under subsection (a) or (b) may be to recover such damages as shall represent the difference between the amount paid for the lot and the reasonable cost of any improvements thereto, and the lesser of (1) the value thereof as of the time such suit was brought, or (2) the price at which such lot shall have been disposed of in a bona fide market transaction before suit, or (3) the price at which such lot shall have been disposed of after suit in a bona fide market transaction but before judgment.²¹²

Contribution is also provided by this section.

The aforementioned provisions are in complete accord with the idea of full disclosure and deal primarily with the aspect of facts presented to the prospective purchaser. Once these facts are disclosed, the implication is that the problem of land fraud should be solved by intelligent decisions on the part of the purchaser. Therefore, these provisions are concerned with disclosure of facts but are not aimed at fraud or deception in the transaction itself. For example, deception not arising from statements material to the statement of record or property report would seemingly not be covered. However, it is just at this point that the great potential of section 1709 lies. Section 1709(b) states:

- (b) Any developer or agent, who sells or leases a lot in a subdivision—
 - (1) in violation of section 1703 . . .
 - (2) . . . may be sued by the purchaser of such lot.²¹³

Recalling that section 1703(a)(2) prohibits the employment of "any device, scheme, or artifice to defraud" in the sale, lease, or offer to sell or lease any lot in a subdivision,²¹⁴ it becomes apparent that a liberal interpretation of section 1709 could provide a remedy for the buyer—not only in the disclosure aspect of the transaction, but also in any other aspect of the transaction which may be fraudulent. This kind of interpretation would require a reading of the section analogous to that given Rule 10b-5 of the Securities Exchange Act of 1934. Since the best analogy provided for dealing with land promotion schemes is that of investment contracts, the interpretation is a definite possibility. It will be in-

²¹⁰ 15 U.S.C. § 1709(a) (Supp. V, 1970).

²¹¹ *Id.* § 1709(b)(2).

²¹² *Id.* § 1709(c).

²¹³ *Id.* § 1709(b).

²¹⁴ *Id.* § 1703(a)(2).

teresting to see the interpretation given this section when finally brought before the courts. In the interest of preventing fraud and deception in all facets of land sales, section 1709 should be liberally construed to provide maximum protection for investors and purchasers.

The Office of Interstate Land Sales Registration has brought two actions in the district courts²¹⁵ pursuant to section 1714 which provides that the Secretary or his appointees may bring an action for injunction in the United States district courts when a person "is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of this title."²¹⁶ It is still early to ascertain just how effective OILSR will be in preventing land sales abuses; however, a broad interpretation and administration of the statute should cause developers to be on guard when preparing their promotional schemes.

Section 1714 also provides a means by which the Secretary may keep the law as modern as the schemes devised to circumvent it. For example, he is given the authority to publish information and to investigate any

facts, conditions, practices, or matters which he may deem necessary or proper to aid in the enforcement of the provisions of this title, in the prescribing of rules and regulations thereunder, or in securing information to serve as a basis for recommending further legislation concerning the matters to which this title relates.²¹⁷

It is hoped that OILSR will be active in seeking to devise new methods of dealing with the varied types of land sales schemes which invariably manage to circumvent existing law. This tendency to keep abreast of the field of land sales will hopefully be expressed in a wide interpretation of the Act.

Other provisions of the Act are essential to its enforcement and administration. It is suggested, however, that if the sections mentioned are interpreted rigorously, full protection for the purchaser of interstate subdivided land may become a reality.

VII. Conclusion

Although the interstate sale of subdivided land has for many years caused hardships upon purchasers expecting fine land for retirement or excellent investment opportunities, the Interstate Land Sales Full Disclosure Act, if liberally interpreted by both the courts and the OILSR, has the potential to remedy existing abuses. In conjunction with adequate control at the state level, the Act is sufficient to provide jurisdictional and before-the-fact protection. Although legislative history and early administration of title XIV seem to suggest merely an intent to mandate full disclosure, broad interpretation of certain provisions of the Act by the courts could provide remedies for abuses in the sale of retirement lands as well as investment lands in all aspects of the transaction.

An investigation of the evolution of investment securities cases and the

²¹⁵ *Romney v. Gulf Land Co.*, Civil No. 3973 (S.D. Miss., Aug. 11, 1970) (permanent injunction); *Romney v. Geotis*, Civil No. 70-752-5 (D. Mass., Sept. 8, 1970) (consent decree).

²¹⁶ 15 U.S.C. § 1714 (Supp. V, 1970).

²¹⁷ *Id.* § 1714(b).

principles utilized therein shows the courts have adequate precedent for construing the provisions of the Act in a manner suitable to the protection of purchasers and investors. It is now left to the courts to realize the extent of protection needed by investors in interstate land sales. By applying principles from securities law in interpreting the Interstate Land Sales Full Disclosure Act, OILSR and the courts now have the opportunity to cure many of the existing abuses. It remains to be seen whether or not this approach will be used in providing maximum protection for purchasers and investors.

Glen A. Anger

APPENDIX

STATE STATUTES REGULATING THE SALE OF UNDEVELOPED LAND

<i>State</i>	<i>Type</i>	<i>Administered</i>	<i>Penalty</i>	<i>Focus</i>
Alabama	false advertising	criminal offense	\$25 to \$1000 and/or 60 days	prohibit misleading advertising
Alaska	U.L.S.P.A. ¹	Dep't of Commerce	extensive	registration and public offering statement
Arizona	Consumer fraud	Att'y General	extensive	intentional deception
Arkansas	False advertising	criminal offense	\$1000 and/or 60 days	prohibit misleading advertising
California	Real estate	Real Estate Commission	rescission; \$5000 and/or 5 yrs. state prison or 1 yr. county jail	offering statement and misleading advertising
Colorado	Consumer protection	Att'y General	extensive	intentional deception
Connecticut	Real estate	Real Estate Commission	\$1000 to \$5000; revocation	disclosure
Delaware	Consumer fraud	Att'y General	extensive	intentional deception
District of Columbia	Fraudulent advertising	criminal offense	\$500 and/or 60 days	prohibit misleading advertising
Florida	U.L.S.P.A. ¹	Land Sales Board	extensive	registration and public offering statement
Georgia	Deceptive advertising (out-of-state land)	Real Estate Commission	injunction	prevent incoming deception
Hawaii	U.L.S.P.A. ¹	Dir. of Regulatory Agencies	extensive	registration and public offering statement
Idaho	False advertising	criminal offense	\$25 to \$300	prohibit misleading advertising
Illinois	Land Sales Act	Dept. of Registration and Education	extensive	registration and public offering statement
	False advertising	criminal offense	\$100 to \$1000	prohibit misleading advertising
	Deceptive advertising (out-of-state land)	criminal offense	injunction or \$100 to \$1000	prevent incoming deception
Iowa	consumer fraud	Att'y General	extensive	intentional deception and misleading advertising
Kansas	U.L.S.P.A. ¹	Securities Comm'r	extensive	registration and public offering statement
Kentucky	False advertising	criminal offense	\$500 and/or 60 days	prohibit misleading advertising
Louisiana	False advertising	criminal offense	\$25 to \$500 and/or 10 days to 6 months	prohibit misleading advertising
Maine	None			
Maryland	Consumer protection	Att'y General	extensive	intentional deception
Massachusetts	Consumer protection	Att'y General	extensive	intentional deception
Michigan	Unlawful advertising	Att'y General	injunction; \$1000	intentional deception
Minnesota	Subdivision Control	Comm'r of Securities	injunction; gross misdemeanor	public report and prevent deception
Mississippi	False advertising	criminal offense	\$500	prohibit misleading advertising

<i>State</i>	<i>Type</i>	<i>Administered</i>	<i>Penalty</i>	<i>Focus</i>
Missouri	Unlawful advertising	Att'y General	injunction; restoration; \$5000	intentional deception
Montana	Subdivision Control	Real Estate Commission	extensive	registration and public offering statement
Nevada	False advertising	criminal offense	injunction; gross misdemeanor	intentional deception
	Investigation	Real Estate Division	injunction; restitution	deception in subdivision sales
Nebraska	None			
New Hampshire	Land Sales Full Disclosure	Division of Consumer Protection	extensive	full disclosure
New Jersey	Fraudulent advertising	Att'y General		intentional deception
New Mexico	Subdivision Control	Att'y General	injunction; \$100,000	deception in sale and advertising
New York	Subdivision Control	Department of State	extensive	prevent deception
North Carolina	False advertising	criminal offense	\$50 or 30 days	intentional deception
North Dakota	False advertising	criminal offense	\$100 and/or 30 days injunction	deception in sales and misleading advertising
Ohio	Fraudulent advertising	criminal offense	\$200 to \$1000 and/or 20 days	intentional deception
Oklahoma	Fraudulent advertising	criminal offense	\$50 and/or 20 days	prevent misleading advertising
Oregon	None			
Pennsylvania	Consumer Protection	Att'y General	injunction; \$5000	intentional deception
Rhode Island	Consumer Protection	Att'y General	injunction; \$10,000	intentional deception
South Carolina	U.L.S.P.A. ¹	Real Estate Comm'r	extensive	registration and public offering statement
South Dakota	False advertising	criminal offense	\$200 to \$500 and/or 30 days	prevent misleading advertising
Tennessee	Securities Law (out-of-state land)	Comm'r of Insurance Banking		Securities Regulation
	Fraudulent advertising	criminal offense	\$25 to \$100 and/or 60 days	intentional deception
Texas	Consumer Protection	Att'y General and Consumer Credit Comm'r	injunction; \$10,000	prevent misleading advertising and deceptive conduct
	Deceptive advertising	criminal offense	\$10 to \$200	intentional deception
Utah	False advertising	criminal offense	misdemeanor	prohibit misleading advertising
Vermont	Consumer fraud	Att'y General	injunction; \$10,000; and \$1,000 and damages in civil suit	intentional deception
Virginia	False advertising	criminal offense	misdemeanor	prevent misleading advertising
Washington	Consumer Protection	Att'y General	injunction; restoration; treble damages	prevent deception
West Virginia	sale (out-of-state land)	Comm'r of Securities	\$2000 and/or 6 months	Prevent misleading advertising and deception in sales
Wyoming	False advertising	criminal offense	\$100	prohibit misleading advertising

¹ Uniform Land Sales Practices Act